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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/537,421
Filing Date: December 14, 2007
Appellant(s): BAUMGARTNER ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/25/11 appealing from the Office action mailed 1/3/11.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application: 6-14.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner notes that the appellant has not argued the double patenting rejection of claims 6-9 in the statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,795,052	Choi	8-1998
3,619,592	Lamb	11-1971
4,894,643	Thompson et al.	1-1990
6,295,004	Burnett	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-9 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,651,232. Although the conflicting claims are not identical, they are not patentably distinct from each other because the published patent claims a door, switch, and illumination device that works in the same manner as the instant application.

Claim Rejections - 35 USC § 102

Claim 6-9 rejected under 35 U.S.C. 102(b) as being anticipated by Choi (US 5,795,052).

Choi discloses a washing machine readable on the claimed dishwasher (Appellant) does not provide any limitations that contrast the "dishwasher" from any other type of washer). The device includes a door pivotable about a horizontal axis, a switch 5 of which at least one portion is located inside the door, and a light source 8 located in the machine interior that illuminates the machine when the door is open.

Claim Rejections - 35 USC § 103

Claim 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Lamb (3,619,592).

Lamb discloses a dishwashing machine comprising a pivotable door, a switch 38 capable of generating an electric signal when the door is open, and a light source 30 that illuminates the interior of the machine when the switch is activated (claim 1). Lamb discloses each and every limitation of the claimed invention except for the fact that the

switch is located on the door. Lamb's is located on the door frame. However, the device still functions in the same manner, illuminating a bulb when the door is open. Relocating the switch is considered to be obvious, as it is a mere rearrangement of previously disclosed parts that fails to present unpredictable results. Rearrangement of parts was held to have been obvious. *In re Japikse* 86 USPQ 70 (CCPA 1955). It would have been obvious to one of ordinary skill to relocate the switch, in order to cause a light to function when the door is open.

Claims 10-11 rejected 35 U.S.C. 103(a) as being unpatentable over Lamb OR Choi and further in view of Thompson et al. (US 4,894,643).

Lamb and Choi both disclose switches that illuminate the interior or a washing machine when the door is open. They do not, however, disclose an acoustic alarm that sounds if the door is open for an extended period of time. Thompson discloses an appliance door alarm apparatus that performs this function--alerting the user after a predetermined time. The device includes an alarm connected to a switch. One of ordinary skill at the time of invention could implement such a simple device the apparatus of Choi or Thompson, with the expected result of sounding an alarm to warn the user of an open door.

Claims 12 - 14 rejected under 35 U.S.C. 103(a) as being unpatentable over Burnett (6,295,004) in view of Lamb.

Burnett teaches a dishwasher with a door pivotable around a horizontal access (figure 1). The device includes an angle-sensitive switch mounted in a housing on the door for illuminating lights 20 when the door is in the open position (col 2 lines 5-10).

The lights are not located in the interior of the washing machine. Lamb discloses a light source 30 that is located in the interior of the machine and illuminates the door and interior when the door is opened. It would have been obvious at the time of invention to modify Burnett, and relocate the lights, or add new lights, to the interior of the machine, as disclosed by Lamb, in order to illuminate the crockery when the door is open. The switch of Burnett is angle-sensitive, and is believed to be capable of operating in the same manner as described in claim 13. Furthermore, it is well settled that determination of optimum values of cause effective variables such angle of inclination is within the skill of one practicing the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980). Such a modification would be routine to one of ordinary skill and provide predictable results. Both Burnett and Lamb disclose doors that can support the crockery basket when they are wheeled out of the interior, as is conventional in the art.

(10) Response to Arguments

(a) Claims 6-9 are anticipated under 35 U.S.C. § 102(b) by Choi

Appellants have argued that the switch disclosed in Choi is not located on or inside the door. While it is true that part 5b is located on the body, part 5a is located on the body, 5a is clearly stated as being located on the door (and confirmed by Appellants on page 6 of arguments). Thus, at least part of the switch is located on the inside surface of the door.

Furthermore, Appellants have argued that the reed switch of Choi is "switched by a magnetic force of the magnet 5a," and "the magnet of 5a is separated from the reed

switch 5b by a constant distance, thereby operating the reed switch 5b" and therefore the switch is not operable as a function of the pivoting angle of the door. However, the magnet is at least part of the switch, and after the door moves to an open position, causes lights to activate, which are expected to be capable of illuminating the door to some degree. Thus, the rejections of Claims 6-9 are maintained.

(b) Claims 6-9 are unpatentable under 35 U.S.C. § 103(a) over Lamb

Appellants have argued that Lamb does not teach a switch operable to generate an electric signal when a predetermined pivoting angle of the door is reached as the door is being opened. However, Lamb's device turns on the light when the pivoting angle of the door no longer places pressure on the push button switch. Thus, the pivoting angle when the switch is released reads on the claimed predetermined angle. Appellants have no positively recited any structural differences that differentiate the instant application from the prior art and thus these rejections are maintained.

(c) Claims 10 and 11 are unpatentable under 35 U.S.C. § 103(a) over Lamb or Choi and further in view of Thompson et al.

Claims 10 and 11 were argued to not be unpatentable over Lamb or Choi further in view of Thompson et al. because Thompson et al. does not overcome the failure of Choi or Lamb to teach the features of Claim 6. Because the rejection of Claim 6 has been maintained, the rejections of Claims 10-11 are also maintained.

(d) Claims 12-14 are unpatentable under 35 U.S.C. § 103(a) over Burnett in view of Lamb

Appellants have argued only that "[a]ssuming arguendo, neither Burnett nor Lamb (for the reasons discussed above) disclose or suggest the claimed switch of claim 12." This is not persuasive because Appellants are not actually assuming *arguendo*, and additionally have only concluded by the switch of claim 12 is not taught, without specifically pointing out in this section why neither reference teaches the claimed switch. Because the rejections above are maintained, the rejections of Claims 12-14 are maintained.

(e) Claims 6-9 are unpatentable on the ground of obviousness-type double patenting over Claim 1 of US 7,651,232

The basis for the double patenting rejection of Claims 6-9 found above has not been argued by the Appellants and thus these claim rejections are maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/JYK/

Jason Y. Ko

Patent Examiner, Art Unit 1711

8 June 2011

Conferees:

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1711

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